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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

No. [redacted] 152

STATE OF MINNESOTA,

Plaintiff,

vs.

ROBERT HUGH ROBINSON,

Defendant.

BRIEF OF RESPONDENT, THE STATE OF MINNESOTA, IN OPPOSITION TO THE PETITION FOR CERTIORARI

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IN THE

Supreme Court of the United States

No. 1007

STATE OF MINNESOTA,

Plaintiff,

vs.

ROBERT HUGH ROBINSON,

Defendant.

BRIEF OF RESPONDENT, THE STATE OF MINNESOTA, IN OPPOSITION TO THE PETITION FOR CERTIORARI

SUMMARY OF OBJECTIONS TO PETITION

The petition for the Writ of Certiorari herein does not set forth grounds upon which the jurisdiction of this Court properly may be invoked. The decision of the Supreme Court of the State of Minnesota sought to be reviewed by this proceeding is not a final judgment, the matter having been remanded for further proceedings in the lower court. The record is inadequate for purposes of review.

The constitutional right to a speedy trial does not arise until after a formal complaint has been filed.

ARGUMENT

I

The petitioner seeks to invoke the jurisdiction of this Court under *28 USCA, Section 1257,* which reads in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court * * *."

In the case presented to this Court for review there is no final judgment, decision, or determination of the question involved. The decision of the Minnesota Supreme Court is not a final decision. There is herewith submitted a copy of the Mandate of the Supreme Court remanding the matter to the District Court for further proceedings. (Appendix A of Respondent's Brief)

There were two questions certified by the lower court to the State Supreme Court. (Pet. Brief, Appendix E, p. 39) The State Supreme Court said: "*In answer to the first question, the matter is remanded for further proceedings pursuant to the decision we here reach.*" (Italics supplied.) (Pet. Brief, Appendix E, p. 39)

This matter is still pending before the District Court, which is the lower court in the State of Minnesota. The District Court has jurisdiction over all felonies in the State of Minnesota committed in the several districts. *Minnesota Constitution, Art. VI, Sec. 5.* This entire matter with reference to the question of res judicata or collateral estoppel is still pending before the lower court because the State Supreme Court refused to decide the issue on that point because the record before it was inadequate and therefore

the State Supreme Court remanded the case to the lower court for further action.

The State Supreme Court said (Pet. Brief, Appendix E, pp. 41, 42): "The problems we here face do not involve the principles of double jeopardy as much as the doctrine of res judicata or collateral estoppel. The question is whether the record requires us to hold that there was implicit in the verdict of 'not guilty' in the burglary prosecution a finding that defendant established an alibi which bars his prosecution for indecent assault. *We are of the opinion that the record is too sketchy and fragmentary to permit such a holding.*" (Italics supplied.)

The State Supreme Court not only remanded the case to the lower court, but it also suggested to the lower court and the petitioner what they could do to bring about a decision on the point by the lower court. The State Supreme Court suggested to the lower court and the defendant as follows (Pet. Brief, Appendix E, p. 47):

> "If a more extensive record in this case, including the testimony of defendant and his witnesses, the closing argument of defendant's counsel, and the full charge of the court, satisfied the trial court that no other issue was raised or submitted by defendant, the trial court will dismiss the indictment for assault under the doctrine of collateral estoppel. For the reasons stated, the matter is remanded to afford defendant an opportunity to make such a showing, and in the event of his inability to do so, he will be tried under the indictment for assault."

Here we have a situation where the State Supreme Court could not and did not make a decision because the record was wholly inadequate. However, to be fair to the petitioner

and not deprive him of a hearing on the question of res judicata and collateral estoppel, that court remanded the matter to the lower court as the Supreme Court said "to afford defendant an opportunity to make such a showing." However, he now seeks review by this Court instead of presenting his case to the lower court.

In the case of *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 70 S. Ct. 252, 94 L. Ed. 562, this Court stated:

> "Among the grounds upon which the Supreme Court of the United States may deny a writ of certiorari are that the review has been sought too late, *that the judgment of the lower court is not final*, that the judgment is not one of a state court of last resort, that the decision may be supportable as a matter of state law not subject to review by the Supreme Court even though the state court also passed on issues of Federal law, that even though technical requirements are satisfied the *record may be cloudy making it desirable to have different aspects of an issue further illumined by the lower courts.*" (Italics supplied.)

For a state court judgment to be final for purpose of review by this Court, it must be the final word of a final court in the sense that (1) it must be subject to no further review or correction in any other state tribunal, and (2) it must be an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. See *Market Street R. C. v. Railroad Commission of Cal.*, 324 U.S. 548, 65 S. Ct. 770, 89 L. Ed. 1171.

In the instant case there is no effective determination of the litigation for much remains to be done in the lower court in order to secure an effective determination. No judgment is final which does not terminate the litigation between the

parties. See *St. Clair County v. Livingston*, 18 Wall. 629, 21 L. Ed. 813.

To be reviewable by the United States Supreme Court, a judgment or decree must not only be final but complete; that is, final not only as to all the parties, but as to the whole subject matter and as to all the causes of action involved. See *Arnold v. United States of America for the use of W. B. Guimarin & Co.*, 263 U.S. 427, 44 S. Ct. 144, 68 L. Ed. 371.

The whole of the matters in controversy in the suit below must be disposed of before a writ of error from the United States Supreme Court will lie. See *Holcombe v. McKusick*, 20 How. 552, 15 L. Ed. 1020.

The controversy certainly has not been disposed of in the instant case for it still must be determined by the District Court, which is the lower court before which the matter is still pending. We can easily determine that this is not a final judgment, for the lower District Court can yet determine the cause if the petitioner would follow the suggestions of the State Supreme Court.

It seems that one of the tests of finality of a judgment is whether or not the matters decided, or as in this case undecided, can again be raised or questioned. Certainly in the instant case they can be raised and should be raised in the lower court, i.e. the District Court, according to the orders of the Supreme Court in its remanding the matter to that lower Court.

Bostwick v. Brinkerhoff, 106 U.S. 3, 1 S. Ct. 15, 27 L. Ed. 73, sets forth the rules as follows:

> "A State judgment or decree, to be final so as to give this court jurisdiction on appeal or writ of error, must terminate the litigation between the parties on the merits of the case. A judgment of reversal with leave for further

proceedings in the court below, cannot be brought here on writ of error, as it does not terminate the litigation in the suit."

It has long been uniformly held that a judgment of reversal, with leave for further proceedings in the court below, cannot be brought to the United States Supreme Court for review. Just one of the many such cases is that of *Rice v. Sanger*, Kan. 1892, 144 U.S. 197, 12 S. Ct. 664, 36 L. Ed. 403. See also cases cited in annotations to *28 USCA 1257*.

This decision, not being final, does not invoke the jurisdiction of this Court.

II

The petitioner seeks review of that part of the decision of the State Supreme Court in which the Court held that the defendant had not been deprived of a speedy trial. We consider the reasons assigned by the Minnesota Court for its conclusion so clear and convincing as to require no argument by respondent. The State Court held as follows:

"There is no merit in the defendant's claim that, because he was not indicted or taken into custody until more than a year after the offense alleged, he has been denied a speedy trail. Ordinarily, the constitutional protection of a speedy trial envelopes defendant only from the time he is taken into custody and indicates to the court that he is prepared to go forward." (Pet. Brief, Appendix E, p. 47)

Minnesota Statutes Annotated 628.26 reads as follows:

"Indictments for murder may be found at any time after death of the person killed; in all other cases, indictments shall be found and filed in the proper court within three years after the commission of the offense; * * *"

The indictment charging the defendant with Indecent Assault was returned by the Grand Jury on June 28, 1960, which is 13 months and three days after occurrence of the alleged crime, and well within the three-year statute of limitations.

> "Provisions of the sixth amendment to the federal constitution guaranteeing a speedy trial to anyone charged with an offense contemplates a pending charge and not the mere possibility of a criminal charge and, therefore, defendant's right to a speedy trial could not be deemed violated on the theory the government did not commence its prosecution against defendant until about three years after crimes in question were allegedly committed."

Parker v. U. S., 252 F. 2d 680, certiorari denied, 356 U.S. 964, 78 S. Ct. 1003, 2 L. Ed. 2d 1071.

A defendant's right to a speedy trial arises only after a formal complaint, or indictment or information, has been filed against him.

> "The Sixth Amendment provides: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.' The Sixth Amendment applies to the right to a speedy trial after formal complaint is lodged against a defendant in a criminal case. It has been held that the constitutional right to a speedy trial does not arise until after such formal complaint has been filed. See *D'Aquino v. United States*, 9 Cir., 192 F. 2d 338, 350 * * * as to delay from the time of the commission of the offense to the commencement of the criminal proceedings, that is controlled by the Statute of Limitations, which is not here in question."

Hoopengarner v. United States, 270 F. 2d 465, 469.

CONCLUSION

It is respectfully submitted that there is in fact no decision of the State Supreme Court to review for that court remanded the issue of collateral estoppel and res judicata to the lower court with instructions to give the petitioner opportunity to present the issue to the lower court for determination. The petitioner has never presented the issue to the lower court pursuant to such instructions. The cause is still pending in that lower court.

The record before this Court is so inadequate it is not possible to review the cause.

No issue of constitutional right to a speedy trial is raised inasmuch as defendant was charged with violating a state law within the period set forth by the statute of limitations. The indictment was returned just thirteen months and three days afer the offense, and defendant was promptly arraigned. A motion by defendant to stay further proceedings was granted.

It is respectfully submitted that the petition be denied.

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APPENDIX A

MANDATE

STATE OF MINNESOTA

SUPREME COURT—ss.

THE STATE OF MINNESOTA to the Honorable Judge and Officers of the District Court within and for the County of Ramsey — Greeting:

WHEREAS, lately in your Court, in action therein pending; entitled STATE OF MINNESOTA, *Plaintiff*, and ROBERT HUGH ROBINSON, *Defendant*, two questions were certified to the Supreme Court.

AND WHEREAS, the said cause came on to be heard before our Supreme Court, and was argued by counsel;

ON CONSIDERATION WHEREOF, as to question No. 1 the matter is remanded for further proceedings pursuant to the decision reached in the opinion; and as to question No. 2 the answer is in the negative, and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this remittitur.

NOW THEREFORE, this MANDATE is to you directed and certified, to inform you of these proceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith REMANDED to your Court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

WITNESS, the Honorable OSCAR R. KNUTSON, Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this April 11, 1962.

MAE SHERMAN
Clerk of the Supreme Court
By JOHN McCARTHY, Deputy